



Senate

General Assembly

File No. 698

January Session, 2009

Substitute Senate Bill No. 1091

Senate, April 20, 2009

The Committee on Judiciary reported through SEN. MCDONALD of the 27th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

***AN ACT CONCERNING COMPLAINTS PENDING IN THE
DEPARTMENT OF PUBLIC HEALTH AGAINST PHYSICIANS AND
OTHER HEALTH CARE PROVIDERS.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 19a-14 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2009*):

3 (a) The Department of Public Health shall have the following
4 powers and duties with regard to the boards and commissions listed in
5 subsection (b) of this section which are within the Department of
6 Public Health. The department shall:

7 (1) Control the allocation, disbursement and budgeting of funds
8 appropriated to the department for the operation of the boards and
9 commissions;

10 (2) Employ and assign such personnel as the commissioner deems
11 necessary for the performance of the functions of the boards and
12 commissions;

13 (3) Perform all management functions including purchasing,
14 bookkeeping, accounting, payroll, secretarial, clerical and routine
15 housekeeping functions;

16 (4) Adopt, with the advice and assistance of the appropriate board
17 or commission, and in accordance with chapter 54, any regulations
18 which are consistent with protecting the public health and safety and
19 which are necessary to implement the purposes of subsection (a) of
20 section 2c-2b, this chapter, and chapters 368v, 369 to 375, inclusive, 378
21 to 381, inclusive, 383 to 388, inclusive, 398 and 399;

22 (5) Develop and perform all administrative functions necessary to
23 process applications for licenses and certificates;

24 (6) Determine the eligibility of all applicants for permits, licensure,
25 certification or registration, based upon compliance with the general
26 statutes and administrative regulations. The department may deny the
27 eligibility of an applicant for a permit or for licensure by examination,
28 endorsement, reciprocity or for reinstatement of a license voided
29 pursuant to subsection (f) of section 19a-88, or may issue a license
30 pursuant to a consent order containing conditions that must be met by
31 the applicant if the department determines that the applicant:

32 (A) Has failed to comply with the general statutes and
33 administrative regulations governing his profession;

34 (B) Has been found guilty or convicted as a result of an act which
35 constitutes a felony under (i) the laws of this state, (ii) federal law or
36 (iii) the laws of another jurisdiction and which, if committed within
37 this state, would have constituted a felony under the laws of this state;

38 (C) Is subject to a pending disciplinary action or unresolved
39 complaint before the duly authorized professional disciplinary agency
40 of any state, the District of Columbia, a United States possession or
41 territory, or a foreign jurisdiction;

42 (D) Has been subject to disciplinary action similar to an action
43 specified in subsection (a) of section 19a-17 by a duly authorized

44 professional disciplinary agency of any state, the District of Columbia,
45 a United States possession or territory, or a foreign jurisdiction;

46 (E) Has committed an act which, if the applicant were licensed,
47 would not conform to the accepted standards of practice of the
48 profession, including but not limited to, incompetence, negligence,
49 fraud or deceit; illegal conduct; procuring or attempting to procure a
50 license, certificate or registration by fraud or deceit; or engaging in,
51 aiding or abetting unlicensed practice of a regulated profession,
52 provided the commissioner, or his designee, gives notice and holds a
53 hearing, in accordance with the provisions of chapter 54, prior to
54 denying an application for a permit or a license based on this
55 subparagraph; or

56 (F) Has a condition which would interfere with the practice of his
57 profession, including, but not limited to, physical illness or loss of skill
58 or deterioration due to the aging process, emotional disorder or mental
59 illness, abuse or excessive use of drugs or alcohol, provided the
60 commissioner, or his designee, gives notice and holds a hearing in
61 accordance with the provisions of chapter 54, prior to denying an
62 application for a permit or a license based on this subparagraph;

63 (7) Administer licensing examinations under the supervision of the
64 appropriate board or commission;

65 (8) Develop and perform all administrative functions necessary to
66 process complaints against persons licensed by the department;

67 (9) Consent to the approval or disapproval by the appropriate
68 boards or commissions of schools at which educational requirements
69 shall be met;

70 (10) Conduct any necessary review, inspection or investigation
71 regarding qualifications of applicants for licenses or certificates,
72 possible violations of statutes or regulations, and disciplinary matters.
73 In connection with any investigation, the Commissioner of Public
74 Health or said commissioner's authorized agent may administer oaths,

75 issue subpoenas, compel testimony and order the production of books,
76 records and documents. If any person refuses to appear, to testify or to
77 produce any book, record or document when so ordered, a judge of
78 the Superior Court may make such order as may be appropriate to aid
79 in the enforcement of this section;

80 (11) With respect to any review, inspection or investigation under
81 subdivision (10) of this subsection concerning a complaint brought by
82 a patient or a patient's representative alleging incompetence,
83 negligence, fraud or deceit by a person subject to regulation or
84 licensing by any board or commission described in subdivisions (1) to
85 (5), inclusive, (7), (8), (12) to (14), inclusive, or (16) of subsection (b) of
86 this section:

87 (A) Provide information to the patient or the patient's
88 representative, at least monthly, on the status of the review, inspection
89 or investigation;

90 (B) Permit the patient or the patient's representative to provide
91 testimony prior to any finding of no probable cause or a dismissal on
92 other grounds;

93 (C) Permit the patient or the patient's representative to attend and
94 provide testimony at any hearing held with respect to the review,
95 inspection or investigation;

96 (D) Notify the patient or the patient's representative of the
97 provisions set forth in subparagraphs (A) to (C), inclusive, of this
98 subdivision, not later than ten calendar days after the complaint is
99 brought;

100 (E) Provide not less than ten calendar days' notice to the patient or
101 the patient's representative of the opportunity to provide testimony
102 pursuant to subparagraph (B) or (C) of this subdivision, when
103 applicable; and

104 (F) Notify the patient or the patient's representative of the final
105 decision with respect to such review, inspection or investigation not

106 later than seven calendar days after such final decision is made;

107 ~~[(11)]~~ (12) Conduct any necessary investigation and follow-up in
108 connection with complaints regarding persons subject to regulation or
109 licensing by the department;

110 ~~[(12)]~~ (13) Perform any other function necessary to the effective
111 operation of a board or commission and not specifically vested by
112 statute in the board or commission;

113 ~~[(13)]~~ (14) Contract with a third party, if the commissioner deems
114 necessary, to administer licensing examinations and perform all
115 attendant administrative functions in connection with such
116 examination.

117 (b) The department shall have the powers and duties indicated in
118 subsection (a) of this section with regard to the following professional
119 boards and commissions:

120 (1) The Connecticut Medical Examining Board, established under
121 section 20-8a;

122 (2) The Connecticut State Board of Examiners for Optometrists,
123 established under subsections (a) to (c), inclusive, of section 20-128a;

124 (3) The Connecticut State Board of Examiners for Nursing,
125 established under section 20-88;

126 (4) The Dental Commission, established under section 20-103a;

127 (5) The Board of Examiners of Psychologists, established under
128 section 20-186;

129 (6) The Connecticut Board of Veterinary Medicine, established
130 under section 20-196;

131 (7) The Connecticut Homeopathic Medical Examining Board,
132 established under section 20-8;

133 (8) The Connecticut State Board of Examiners for Opticians,
134 established under subsections (a) to (c), inclusive, of section 20-139a;

135 (9) The Connecticut State Board of Examiners for Barbers and
136 Hairdressers and Cosmeticians, established under section 20-235a;

137 (10) The Connecticut Board of Examiners of Embalmers and Funeral
138 Directors established under section 20-208;

139 (11) Repealed by P.A. 99-102, S. 51;

140 (12) The State Board of Natureopathic Examiners, established under
141 section 20-35;

142 (13) The State Board of Chiropractic Examiners, established under
143 section 20-25;

144 (14) The Connecticut Board of Examiners in Podiatry, established
145 under section 20-51;

146 (15) The Board of Examiners of Electrologists, established under
147 section 20-268; and

148 (16) The Connecticut State Board of Examiners for Physical
149 Therapists.

150 (c) No board shall exist for the following professions that are
151 licensed or otherwise regulated by the Department of Public Health:

152 (1) Speech and language pathologist and audiologist;

153 (2) Hearing instrument specialist;

154 (3) Nursing home administrator;

155 (4) Sanitarian;

156 (5) Subsurface sewage system installer or cleaner;

157 (6) Marital and family therapist;

- 158 (7) Nurse-midwife;
- 159 (8) Licensed clinical social worker;
- 160 (9) Respiratory care practitioner;
- 161 (10) Asbestos contractor and asbestos consultant;
- 162 (11) Massage therapist;
- 163 (12) Registered nurse's aide;
- 164 (13) Radiographer;
- 165 (14) Dental hygienist;
- 166 (15) Dietitian-Nutritionist;
- 167 (16) Asbestos abatement worker;
- 168 (17) Asbestos abatement site supervisor;
- 169 (18) Licensed or certified alcohol and drug counselor;
- 170 (19) Professional counselor;
- 171 (20) Acupuncturist;
- 172 (21) Occupational therapist and occupational therapist assistant;
- 173 (22) Lead abatement contractor, lead consultant contractor, lead
174 consultant, lead abatement supervisor, lead abatement worker,
175 inspector and planner-project designer;
- 176 (23) Emergency medical technician, emergency medical technician-
177 intermediate, medical response technician and emergency medical
178 services instructor;
- 179 (24) Paramedic;
- 180 (25) Athletic trainer; and

181 (26) Perfusionist.

182 The department shall assume all powers and duties normally vested
183 with a board in administering regulatory jurisdiction over such
184 professions. The uniform provisions of this chapter and chapters 368v,
185 369 to 381a, inclusive, 383 to 388, inclusive, 393a, 395, 398, 399, 400a
186 and 400c, including, but not limited to, standards for entry and
187 renewal; grounds for professional discipline; receiving and processing
188 complaints; and disciplinary sanctions, shall apply, except as otherwise
189 provided by law, to the professions listed in this subsection.

190 (d) Except as provided in section 20-13e, as amended by this act, all
191 records obtained by the department in connection with any
192 investigation of a person or facility over which the department has
193 jurisdiction under this chapter, other than a physician as defined in
194 subdivision (5) of section 20-13a, shall not be subject to disclosure
195 under section 1-210 for a period of one year from the date of the
196 petition or other event initiating such investigation, or until such time
197 as the investigation is terminated pursuant to a withdrawal or other
198 informal disposition or until a hearing is convened pursuant to chapter
199 54, whichever is earlier. A complaint, as defined in subdivision (6) of
200 section 19a-13, shall be subject to the provisions of section 1-210 from
201 the time that it is served or mailed to the respondent. Records which
202 are otherwise public records shall not be deemed confidential merely
203 because they have been obtained in connection with an investigation
204 under this chapter.

205 Sec. 2. Section 20-13e of the general statutes is repealed and the
206 following is substituted in lieu thereof (*Effective October 1, 2009*):

207 (a) The department shall investigate each petition filed pursuant to
208 section 20-13d, in accordance with the provisions of [subdivision (10)]
209 subdivisions (10) and (11) of subsection (a) of section 19a-14, as
210 amended by this act, to determine if probable cause exists to issue a
211 statement of charges and to institute proceedings against the physician
212 under subsection (d) of this section. Such investigation shall be
213 concluded not later than eighteen months from the date the petition is

214 filed with the department and, unless otherwise specified by this
215 subsection, the record of such investigation shall be deemed a public
216 record, in accordance with section 1-210, at the conclusion of such
217 eighteen-month period. Any such investigation shall be confidential
218 and no person shall disclose his knowledge of such investigation to a
219 third party unless the physician requests that such investigation and
220 disclosure be open, except that the department shall provide
221 information to the patient or the patient's representative pursuant to
222 subdivision (11) of subsection (a) of section 19a-14, as amended by this
223 act. If the department determines that probable cause exists to issue a
224 statement of charges, the entire record of such proceeding shall be
225 public unless the department determines that the physician is an
226 appropriate candidate for participation in a rehabilitation program in
227 accordance with the provisions of sections 19a-12a and 19a-12b. The
228 petition and all records of any physician determined to be eligible for
229 participation in a rehabilitation program prior to June 11, 2007, shall
230 remain confidential during the physician's participation and upon
231 successful completion of the rehabilitation program, in accordance
232 with the terms and conditions agreed upon by the physician and the
233 department. If at any time subsequent to the filing of a petition and
234 during the eighteen-month period, the department makes a finding of
235 no probable cause, the petition and the entire record of such
236 investigation shall remain confidential, except as provided in
237 subdivision (11) of subsection (a) of section 19a-14, as amended by this
238 act, unless the physician requests that such petition and record be
239 open.

240 (b) As part of an investigation of a petition filed pursuant to
241 subsection (a) of section 20-13d, the Department of Public Health may
242 order the physician to submit to a physical or mental examination, to
243 be performed by a physician chosen from a list approved by the
244 department. The department may seek the advice of established
245 medical organizations or licensed health professionals in determining
246 the nature and scope of any diagnostic examinations to be used as part
247 of any such physical or mental examination. The examining physician
248 shall make a written statement of his or her findings.

249 (c) If the physician fails to obey a department order to submit to
 250 examination or attend a hearing, the department may petition the
 251 superior court for the judicial district of Hartford to order such
 252 examination or attendance, and said court or any judge assigned to
 253 said court shall have jurisdiction to issue such order.

254 (d) Subject to the provisions of section 4-182, no license shall be
 255 restricted, suspended or revoked by the board, and no physician's
 256 right to practice shall be limited by the board, until the physician has
 257 been given notice and opportunity for hearing in accordance with the
 258 regulations established by the commissioner.

259 Sec. 3. Section 19a-14a of the general statutes is repealed and the
 260 following is substituted in lieu thereof (*Effective October 1, 2009*):

261 Any person who is the subject of an investigation pursuant to
 262 subdivision (10) or [(11)] (12) of subsection (a) of section 19a-14 or
 263 disciplinary action pursuant to section 19a-17, while holding a
 264 professional license issued by the Department of Public Health or
 265 having held such a license within eighteen months of the
 266 commencement of such investigation or disciplinary action shall be
 267 considered to hold a valid license for purposes of such investigation or
 268 disciplinary action.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2009</i>	19a-14
Sec. 2	<i>October 1, 2009</i>	20-13e
Sec. 3	<i>October 1, 2009</i>	19a-14a

Statement of Legislative Commissioners:

In section 1, in subparagraphs (a)(11)(D) and (E), "days" was changed to "calendar days" for consistency with the remaining new language. Section 3 was added to the bill to renumber an internal reference to conform to a change made in section 1 of the bill.

JUD *Joint Favorable Subst.-LCO*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 10 \$	FY 11 \$
Public Health, Dept.	GF - Cost	47,363	46,123
Comptroller Misc. Accounts (Fringe Benefits) ¹	GF - Cost	10,590	10,590

Note: GF=General Fund

Municipal Impact: None

Explanation

Performing duties specified within this bill will require the Department of Public Health (DPH) to hire an office assistant, incurring salary costs as well as other related expenses, for a total cost to the agency of \$47,363 in FY 10 and \$46,123 in FY 11 (see below). Costs to the Comptroller for fringe benefits for this position would be \$10,590 in FY 10 and FY 11.

Item	FY 10	FY 11
1.0 Office Assistant	\$41,643	\$41,643
Equipment (computer)	\$770	\$0
Other Expenses (computer software, supplies, cost of certified mail)	\$4,950	\$4,480
TOTAL	\$47,363	\$46,123

¹ The fringe benefit costs for state employees are budgeted centrally in the Miscellaneous Accounts administered by the Comptroller on an actual cost basis. The following is provided for estimated costs associated with additional personnel. The estimated non-pension fringe benefit rate as a percentage of payroll is 25.43%. Fringe benefit costs for new positions do not initially include pension costs as the state's pension contribution is based upon the 6/30/08 actuarial valuation for the State Employees Retirement System (SERS) which certifies the contribution for FY 10 and FY 11. Therefore, new positions will not impact the state's pension contribution until FY 12 after the next scheduled certification on 6/30/2010.

The bill requires DPH to provide certain notifications to patients (or patients' representatives) that brought forward a complaint against certain health care providers, prompting a review, inspection or investigation by the DPH. On average, DPH maintains an open caseload of approximately 425 on-going health practitioner investigations, 85% of which (362) are related to the health care professionals identified in the bill. It is estimated that each of these cases would require approximately ½ an hour of staff time per month to fulfill notification requirements, for a total of 2,172 hours annually, necessitating an additional position in the agency. Other costs include a one-time equipment expense for a computer and other expenses for computer software (in the first year) and on-going expenses for supplies and certified mailings.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

Sources: 3/20/09 Public Hearing Testimony, Department of Public Health

OLR Bill Analysis**SB 1091*****AN ACT CONCERNING COMPLAINTS PENDING IN THE
DEPARTMENT OF PUBLIC HEALTH AGAINST PHYSICIANS AND
OTHER HEALTH CARE PROVIDERS.*****SUMMARY:**

By law, The Department of Public Health (DPH) is the licensing and regulatory agency for a number of health care professionals. In most cases, current law makes information concerning complaints (petitions) against physicians confidential for 18 months, and forever if the department finds no probable cause or permits the physician to enter a rehabilitation program. For all other health care professionals, petitions are confidential for one year. They may be disclosed earlier if (1) the petition is withdrawn or there is some other informal disposition or (2) DPH mails or serves a probable cause determination on them before the one-year confidentiality period expires.

The bill gives patients or their representatives access to information if they have filed petitions alleging incompetence, negligence, fraud, or deceit. It also gives petitioners rights to periodic updates and allows them to attend every hearing and testify.

EFFECTIVE DATE: October 1, 2009

LICENSED HEALTH CARE PROVIDERS

The bill covers petitions against health care providers licensed by the:

1. Medical Examining Board,
2. Board of Examiners for Optometrists,
3. State Board of Examiners for Nurses,

4. Dental Commission,
5. Board of Examiners of Psychologists,
6. Homeopathic Medical Examining Board,
7. Board of Naturopathic Examiners,
8. Board of Chiropractic Examiners,
9. Board of Examiners for Opticians,
10. Board of Examiners in Podiatry, and
11. Board of Examiners for Physical Therapists.

PATIENT INFORMATION AND PARTICIPATION

The bill requires DPH to provide patients or representatives at least monthly reports on the status of the review, inspection, or investigation of their petitions. It must also (1) notify them at least 10 days before any hearing and allow them to attend and testify and (2) permit them to testify before the department finds no probable cause to sustain the petition or intends to dismiss the petition on other grounds. (It is unclear how a petitioner would find out that the department was about to dismiss his or her petition.) DPH must also notify patients or their representatives of the rights described above within 10 days after they file their petitions.

The bill requires DPH to notify them of the outcome of its investigation within seven calendar days of its decision.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable

Yea 40 Nay 0 (03/31/2009)